1201

SUPREME COURT OF THE UNITED STATES.

No. 87.

THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THOMAS W. LETSON.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE DISTRICT OF SOUTH CAROLINA.

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J. & G. S. Gideon, Printers.

UNITED STATES OF AMERICA, to wit:

The President of the United States of America, to the judges of the circuit court of the United States for the sixth circuit and South Carolina district, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said circuit court before you, between Thomas W. Letson and the Louisville, Cincinnati and Charleston Railroad Company, a manifest error hath happened, to the great damage of the said the Louisville, Cincinnati and Charleston Railroad Company, as by their complaint appears: and we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this second Monday of Janu-
[L. S.] ary, in the year of our Lord one thousand eight hundred and forty-two, and of the independence of the United States the sixty-sixth.

Issued at office, in the city of Charleston, under the seal of said circuit court, the seventh day of May, A. D. one thousand eight hundred and forty-two.

H. Y. GRAY,
Clerk of the circuit court of the United States, for the sixth circuit, South Carolina district.

Filed 7th day of May, A. D. 1842, in my office.
H. Y. GRAY, *Clk. Cir. Ct.*

UNITED STATES OF AMERICA, to wit:

To Thomas W. Letson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the sixth circuit, South Carolina district, wherein the Louisville, Cincinnati and Charleston Railroad Company is plaintiff in error, and you are defendant in error,

to show cause, if any there be, why the judgment rendered against the said the Louisville, Cincinnati and Charleston Railroad Company, as in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert B. Gilchrist, judge of the United States for the district of South Carolina, this seventh day of May, in the year of our Lord one thousand eight hundred and forty-two.

R. B. GILCHRIST,
Judge of the United States for the district of South Carolina.

THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY,
ads.
THOMAS W. LETSON.

In the circuit court of the United States for South Carolina district:

We acknowledge notice of the writ of error sued out by the Louisville, Cincinnati and Charleston Railroad Company, defendants in the above entitled cause, to reverse the judgment rendered against them in said cause by the circuit court of the United States for the district of South Carolina, upon which a citation has been regularly allowed and issued, which writ is returnable to the next term of the Supreme Court of the United States.

PETIGRU & LESESNE,
Plaintiff's Attorneys.

DISTRICT OF SOUTH CAROLINA, *sct.*
Clerk's office, Charleston:

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States a full and complete transcript of the record and proceedings of the circuit court of the United States for the district of South Carolina, in a certain suit therein determined in favor of Thomas W. Letson, a citizen of New York, plaintiff, against "The Louisville, Cincinnati and Charleston Railroad Company," a corporation whose members are citizens of South Carolina.

H. Y. GRAY,
Clk. Cir. Ct. U. S., S. C. D.

THE UNITED STATES OF AMERICA,
District of South Carolina, sct:

THOMAS W. LETSON, a citizen of New York,
vs.
THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY, a corporation whose members are citizens of South Carolina.

Be it remembered that heretofore, to wit, on the first day of February, in the year of our Lord one thousand eight hundred and forty-two,

Thomas W. Letson, a citizen of the State of New York, by Messrs. Petigru and Lesesne, his attorneys, sued out of the office of the clerk of the circuit court of the United States for the district aforesaid, a writ of capias ad respondendum, in an action of covenant against the Louisville, Cincinnati and Charleston Railroad Company, a corporation whose members are citizens of the State of South Carolina, in tenor and form following, to wit:

Writ.—*Writ.*

SIXTH CIRCUIT OF THE UNITED STATES OF AMERICA,
South Carolina district:

The President of the United States of America, to the marshal of the said district, greeting:

You are hereby commanded without delay to summon the Louisville, Cincinnati and Charleston Railroad Company, a corporation whose members are citizens of South Carolina, wheresoever they may be found within the aforesaid district, so that you compel them to be and appear before the clerk of the circuit court of the United States of America for the aforesaid circuit and district, at the rules to be holden at Charleston, in the district aforesaid, on the first Monday in February next, to answer to Thomas Warten Letson, a citizen of New York, who has survived Elisha Turner, a citizen of New York, in a plea why they have not kept their covenant with the said Thomas W., survivor as aforesaid, to his damage sixty-two thousand and eighty dollars. And have you then and there this writ.

Witness the honorable R. B. Taney, chief justice of the United States of America, at Charleston, in South Carolina district aforesaid, the 4th Monday of November, in the year of our Lord one thousand eight hundred and forty-one, and in the 66th year of the sovereignty and independence of the United States of America.

[SEAL.]

H. Y. GRAY, Clk. cir. ct.

PETIGRU & LESESNE,
Plaintiff's Attorneys.

Marshal's return.—*Marshal's return.*

I do hereby certify to the honorable the judges of the circuit court of the United States for South Carolina district, that I have served a true copy of the within writ upon James Gadsden, esq., the President of the Louisville, Cincinnati and Charleston Railroad Company, by leaving the same at his office of president of said company, in the hands of E. H. Edwards, esq., treasurer of said company; and further, that I have also served a true copy of the within writ upon Tristram Tupper, esq. personally, the acting president of the said company.

(Signed) THO. D. CONDY,
U. S. M., S. C. D.

5th Feb'y, 1842.

And afterwards, to wit, on the seventh day of March, in the year of our Lord one thousand eight hundred and forty-two, the said Thomas W. Letson, by his attorneys, filed in the office of the clerk of said cir-

cuit court, his declaration against the said the Louisville, Cincinnati and Charleston Railroad Company, the defendants, in the words and figures following, to wit:

Declaration.—*Declaration.*

The Louisville, Cincinnati and Charleston Railroad Company, a corporation whose members are citizens of South Carolina, was summoned to answer to Thomas Warren Letson, a citizen of New York, who has survived Elisha Turner, a citizen of New York, in a plea of breach of covenant. Whereupon the said Thomas Warren, survivor as aforesaid, by Petigru and Lesesne, his attorneys, complains, that whereas, heretofore, to wit, on the thirtieth day of July, which was in the year of our Lord one thousand eight hundred and thirty-eight, and in the lifetime of the said Elisha Turner, to wit, at Charleston, in the district aforesaid, by certain articles of agreement then and there made and concluded between the said Thomas Warren and Elisha Turner, otherwise called T. W. Letson and company, of the one part, and the Louisville, Cincinnati and Charleston Railroad Company, by Robert Y. Hayne, their president for the time being, of the other part: the counterpart of which said indenture, sealed with the seal of the said company, and signed by the said Robert Y. Hayne, their president in that behalf duly authorized, the said Thomas Warren now brings into court, the date whereof is the day and year aforesaid, it was covenanted and agreed in manner following, that is to say: "That the said T. W. Letson & Co. hereby covenant and agree to form and prepare, in a thorough and workmanlike manner, agreeably to the directions of the engineer of said company, a clear and open road-way on the line of the said railroad, as staked out and shown by the plans and profiles thereof, from stake marked 1890, on the land of , to another stake marked 2092, on the land of J. Dantzler and others, being a section of said road extending twenty thousand two hundred (20,200) feet, which road-way is to conform in its course and in its heighths and depths to said plans and profiles. All the excavations in the formation of said road-way to be made to the proper depths, and to have a true and uniform slope on each side, of one and a half feet in width to one foot of heighth; and all embankments shall be compactly made, and the sides thereof shall have a like slope: provided, however, that if, from the nature of the ground, bermes or offsets in the deep cuttings or side-drains anywhere shall be deemed necessary by the engineer of said company, then the same are to be formed agreeably to his direction.

The width of said road-way is to be twenty-six feet at least, at the bottom of the excavation, and at the top of the embankment, both of which are to be levelled transversely, and straight in the direction of the road, conformably to the plans, whether horizontal or inclined, as established through said section.

The ground for the base of each embankment is to be cleaned close to the surface of all bushes, trees, logs and stumps, or any other perishable materials, whenever, in the opinion of the engineer for the time

being, it shall be necessary, in order to insure a compact and solid formation; and whenever the earth to be excavated shall exceed the quantity required by the engineer, for the embankments along the line of said road, within the limits of said section, spoilbanks may be made in such place and form as the engineer shall direct. And when the cuttings do not afford a sufficiency of earth for the fillings, the deficiency shall be supplied from the nearest cutting, so as to increase, regularly, the width of such cutting, or from such other place as the engineer may designate.

All the building stone, or other materials, obtained from the excavation, shall be considered as the property of the company aforesaid, and shall be deposited in such places as the engineer may direct within the limits of said section, either within or without the road-way, to be preserved for the use of said company.

And if at any time the engineer shall think it expedient to change the direction of said line, or lessen or increase the depth, height, or width of the excavation or embankment, or alter the slopes thereof, they may be so changed or altered on such conditions as the engineer shall adjudge to be fair and equitable between the parties to this contract. And the said section of road-way shall be made and completed as herein described, on or before the thirty-first day of March, 1840; and for a failure to make and complete said section of roadway within the time fixed for its completion, the engineer for the time being shall assess such damages as he may think the good of the work requires, and charge said T. W. Letson & Co. with the amount thereof; and the said engineer may employ other help to hasten the completion of said section of road-way, whenever, in his opinion, it shall be requisite to insure the completion of the work within the specified time, and the expense of such help shall be paid by the said T. W. Letson & Co., who, on the completion of their work, will, from time to time, as in the opinion of the engineer shall be necessary, take the requisite measures to keep the road bed in repair prior to the laying of the rails, and for which service they shall be compensated at the estimate of the engineer.

The said T. W. Letson & Co. shall not let or transfer their contract, or any part thereof, to any other person without the consent of the engineer, and they shall, upon the application of the engineer for the time being, discharge any laborer or workman from their employment; and they shall not employ any workman or laborer who has been discharged by any other contractor for improper and disorderly conduct; and further, they shall not sell, or permit to be sold, within the limits of their section or sections, intoxicating liquors, either to persons in their employ or to any other person or persons on or near the line of the railroad. In fine, the said T. W. Letson & Co. will co-operate with other contractors in the maintenance of such system of police, and will themselves conform to such requisitions, as in the opinion of the engineer for the time being, shall conduce to the regular and peaceable progress of all parts of the work, and tend to prevent all unnecessary interference with the rights, privileges and property of persons in the vicinity of said railroad.

In condition of the fulfilment by the said T. W. Letson & Co. of the foregoing provisions of this contract, the said Robert Y. Hayne, as president of and for, and in behalf of, the Louisville, Cincinnati and Charleston Railroad Company, does hereby promise and agree that said company shall and will, for doing and performing the work as aforesaid, pay, or cause to be paid to the said T. W. Letson and Co., their heirs, executors or administrators, at the rate of thirty-three and one-third (33⅓) cents for every cubic yard of earth which said section may contain.

And in case rock excavation shall occur, the said T. W. Letson & Co. shall be entitled to be paid by the company, at the rate of the estimate, per cubic yard, of the engineer. The quantity of hard-pan and its worth, if it shall occur, to be determined by the engineer, and paid for at his estimate, provided that the engineer, for the time being, shall decide on the quantity and quality of the excavation, designating the amount of solid rock and loose rock, and that his decision shall be final and conclusive.

Payments during the progress of the work will be made at the discretion of the said engineer, until the whole of the section hereby contracted for shall have been accepted as completed, agreeably to contract, when the balance due shall forthwith be paid the said T. W. Letson & Co., their heirs, executors or administrators.

And the quantity of work, to be executed under this contract, shall be determined by the admeasurement of the engineer for the time being, or either of the assistant engineers of the company, and said admeasurement shall be conclusive.

And it is further provided, that in case the said T. W. Letson & Co. shall not, in the opinion of the engineer, for the time being well and truly comply with and perform, from time to time, all the covenants hereinbefore stated and stipulated on his part, the said engineer, at his discretion, may dismiss them from the work; and then and in that event, the foregoing agreement shall become null and void; and any balance for work done on said road, which would have been due to said T. W. Letson & Co., shall be forfeited and become the right and property of the company, or the said engineer may make such deductions from the payments to be made to the said T. W. Letson & Co. as aforesaid, as the said engineer shall deem reasonable for such breach of covenants.

And afterwards the price to be paid to the said T. W. Letson & Co. for every cubic yard of earth was increased to thirty-seven cents, as in and by the said articles of agreement, reference being thereunto had, will appear. And the said plaintiff in fact saith that the said T. W. Letson & Co., in pursuance of the said agreement, did form and prepare, in a thorough and workmanlike manner, agreeably to the directions of the engineer of the said company, a clear and open roadway on the line of the said railroad, for the distance and according to the plan, and in the mode and manner particularly specified and set forth in the said articles of agreement. And that the engineer of the said company admeasured the said work, and found the same to consist of three

hundred and five thousand nine hundred and twenty-two (305,922) cubic yards of earth, for which, according to the agreement aforesaid, the said T. W. Letson & Co. are entitled to receive 113,191 $\frac{14}{100}$ dollars. And the said plaintiff in fact further saith, that three-fourths of the soil along the said section of the said road-way, so formed and prepared by the said T. W. Letson & Co. as aforesaid, amounting to two hundred and three thousand, nine hundred and forty-eight (203,948) cubic yards was *hard-pan;* and that the engineer of the said company determined the same to be hard-pan, and estimated its worth to be 12½ cents per cubic yard, making the sum of 25,493 $\frac{50}{100}$ dollars, in addition to the thirty-seven cents per cubic yard before mentioned, and that the same was in fact worth so much. And although the said T. W. Letson and company always, from the time of making the said agreement, well and truly performed, fulfilled and kept all things therein contained on their part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, yet protesting that the said company, since the making of the said agreement aforesaid, hath not performed, fulfilled or kept any thing in the said agreement contained, on their part to be performed, fulfilled and kept according to the tenor and effect, true intent and meaning thereof; the said plaintiff in fact saith, that the said company have not paid the said T. W. Letson and company, nor the said plaintiff as survivor aforesaid, the whole of the said sums of $113,191 $\frac{14}{100}$ dollars, and 25,493 $\frac{50}{100}$ dollars, amounting together to 138,684 $\frac{64}{100}$ dollars, so due and owing as aforesaid; but that a balance thereof, amounting to the sum of 31,740 $\frac{90}{100}$ dollars, besides interest, is still due and unpaid, which the said company absolutely refuses to pay to the said plaintiff.

And whereas also, afterwards, to wit, on the thirtieth day of July, in the year of our Lord (1838) one thousand eight hundred and thirty-eight, and in the lifetime of the said Elisha Turner, to wit, at Charleston, in the district aforesaid, by certain other articles of agreement then and there made and concluded between the said Thomas Warren and Elisha Turner, otherwise called T. W. Letson and company, of the one part, and the Louisville, Cincinnati and Charleston Railroad Company, by Robert Y. Hayne, their president for the time being, of the other part, (the counterpart whereof, sealed with the seal of the said company, and signed by the said Robert Y. Hayne, their president in that behalf duly authorized, the said Thomas Warren now brings here into court, the date whereof is the day and year last aforesaid,) it was covenanted and agreed in manner as in the first count is particularly set forth, and afterwards the price to be paid to the said T. W. Letson & Co. for every cubic yard of earth was increased to thirty-seven cents, as in and by the said articles of agreement, reference being thereunto had, will more fully appear. And the said plaintiff in fact saith that the said T. W. Letson & Co., in pursuance of the said last mentioned articles of agreement, did form and prepare in a thorough and workmanlike manner, agreeably to the directions of the engineer of the said company, a clear and open roadway on the line of the said railroad, for the

distance and according to the plan, and in the mode and manner particularly specified and set forth in the said last mentioned articles of agreement, and that the same consisted of (305,922) three hundred and five thousand nine hundred and twenty-two cubic yards of earth, for which the said T. W. Letson & Co., according to the said last mentioned agreement, were entitled to receive the sum of ($113,191 14,) one hundred and thirteen thousand one hundred and ninety-one $\frac{14}{100}$ dollars.

And the said plaintiff in fact further saith, that three-fourths of the soil along the said section of the said roadway so formed and prepared by the said T. W. Letson & Co. as aforesaid, amounting to two hundred and three thousand nine hundred and forty-eight cubic yards, was hard-pan, and was worth, in addition to the thirty-seven cents per cubic yard above mentioned, twelve and a half cents per cubic yard, equal to ($25,493 50,) twenty-five thousand four hundred and ninety-three dollars 50 cents; making, with the sum above mentioned, the sum of ($138,684 64,) one hundred and thirty-eight thousand six hundred and eighty-four $\frac{64}{100}$ dollars. And although the said T. W. Letson & Co. always, from the time of making the said last mentioned agreement, well and truly performed, fulfilled and kept all things therein contained on their part, to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, to wit, at Charleston aforesaid. Yet, protesting that the said company, since the making of the said last mentioned agreement, hath not performed, fulfilled or kept any thing in the same contained, on their part to be performed, fulfilled and kept, according to the tenor and effect, the true meaning and intent thereof, the said plaintiff in fact saith that the said company hath not paid to the said T. W. Letson & Co., nor to the plaintiff as survivor aforesaid, the whole of the said sum of ($138,684 64,) one hundred and thirty-eight thousand six hundred and eighty-four dollars 64 cents, so due and owing as aforesaid, but that a balance thereof, amounting to the sum of ($31,740 99,) thirty-one thousand seven hundred and forty $\frac{99}{100}$ dollars, besides interest, is still due and unpaid, which the said company absolutely refuses to pay to the said plaintiff.

And whereas also, afterwards, to wit, on the same day and year first above mentioned, to wit, at Charleston, in the district aforesaid, and in the lifetime of the said Elisha Turner, by certain other articles of agreement then and there made and concluded between the said T. W. Letson & Co. of the one part, and the Louisville, Cincinnati and Charleston Railroad Company, by Robert Y. Hayne, their president for the time being, of the other part, (the counterpart whereof, sealed with the seal of the said company, and signed by the said Robert Y. Hayne, their president, in that behalf duly authorized, the said plaintiff now brings here into court, the date whereof is the day and year aforesaid,) the said T. W. Letson and company did covenant and agree to form and prepare, in a thorough and workmanlike manner, a clear and open roadway, for the space of a certain section along the line of the said railroad, in manner therein particularly set forth, at and for a certain

compensation and reward therein specified; and the said company did covenant and agree, that upon the completion of the said work, and the acceptance thereof as completed agreeably to contract, the balance due the said T. W. Letson and company should be forthwith paid to them, as in and by the said articles of agreement last mentioned, reference being thereunto had, will appear. And the said plaintiff in fact saith, that the said work was done and performed according to the terms of the said agreement, and was accepted as completed according to contract, and that at the time of the completion thereof, there was a balance due to the said T. W. Letson and company of (31,740 99,) thirty-one thousand seven hundred and forty $\frac{99}{100}$ dollars. And although the said T. W. Letson and company always, from the time of making the said last mentioned agreement, well and truly performed, fulfilled and kept all things therein contained on their part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, to wit, at Charleston, aforesaid. *Yet*, protesting that the said company, since the making of the said last mentioned agreement, hath not performed, fulfilled or kept any thing therein contained on their part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof; the said plaintiff in fact saith, that the said company have not paid the said balance of ($31,740 99,) thirty-one thousand seven hundred and forty $\frac{99}{100}$ dollars, to the said T. W. Letson and company, nor to the said plaintiff, survivor aforesaid, but have absolutely refused, and still refuse, to pay the same or any part thereof. And so the said plaintiff in fact saith that the said defendants, although often requested so to do, have not kept the said covenant so by them made as aforesaid, but have broken the same, and to keep the same with the said T. W. Letson and company, or with the plaintiff, survivor aforesaid, have hitherto wholly neglected and refused, and still do neglect and refuse, to the damage of the said plaintiff, survivor as aforesaid, sixty-two thousand and eighty dollars; and therefore he brings suit, &c.

PETIGRU & LESESNE,
Plaintiff's Attorneys.

The Louisville, Cincinnati and Charleston Railroad Co., to T. W. Letson, survivor of T. W. Letson & Co.—Dr.

1841.			
Sept. 1.	To removing 305,922 cubic yards of earth, being the whole amount of earth removed in section 35, at 37 cents per cubic yard - -	- -	$113,191 14
	To 12½ cts. per cubic yard extra for 203,948 yds. or ⅔ds of the above, the same being hard pan -	-	25,493 50
	To grubbing and cleaning the section - -	$1,250 00	
	To wooden culvert at Lewis's mill creek, including materials and foundation - - -	2,500 00	
	Monk's corner-road bridge and materials -	1,250 00	
	Building fences and gates - - -	85 00	
	Extra draining and ditching - - -	124 40	
	Altering and fixing cross-roads - - -	186 00	
	Making temporary bridges - - -	562 50	
	Repairing a culvert - - - -	24 00	
	Excavating foundation of Louisville depot -	93 00	
	Excavating foundation on Lyon's creek - -	540 00	
	Repairing embankments at State road - -	673 00	
	Extra work filling over culverts to protect masonry	250 70	
	To 9566 cubic yards of earth required to fill over Lyon's creek, to make up for the settlement in the swamp, which was originally to have been prevented by grillage, at 37 cts. per cubic yard -	3,539 42	
	Interest on requisitions not paid when due -	1,169 58	
Cr.	- - - - - - - -	15,247 60	138,684 64
	By amount of requisitions received - -	122,191 25	106,943 65
	Balance due - - -		$31,740 99
	Interest thereon from 1st Sept. 1841.		

And afterwards, to wit, on the eleventh day of March, A. D. one thousand eight hundred and forty-two, in the record of proceedings of the said court is the following entry:

Order for Distringas.

At Chambers—Before his honor, R. B. Gilchrist.

THOMAS W. LETSON, survivor, of New York,
vs.
THE LOUISVILLE, CINCINNATI, AND CHARLESTON RAILROAD COMPANY, of S. Carolina.
} Declaration in covenant.

On reading the return of the marshal to the summons issued in this case, and proof that no appearance has been entered for defendants—ordered, that a distringas issue to compel an appearance, on motion of Petigru and Lesesne.

Writ of Distringas.—*Distringas.*

UNITED STATES OF AMERICA,
Sixth circuit, So. Carolina district:

The President of the United States to Thomas D. Condy, esquire, marshal of the United States for the district of South Carolina:

You are hereby commanded that you distrain the Louisville, Cincinnati and Charleston Railroad Company, a corporation consisting of citizens of South Carolina, and incorporated by an act of the said State, by all their lands, goods and chattels in your district, so that neither the said corporation nor any one for them do lay hands on the same, until you are otherwise commanded, and that you answer to us for the issues of the same; so that you compel the said corporation to be and appear in the circuit court of the United States, for the sixth circuit and district of South Carolina, before the justices of the said court in Charleston, on the fourth day of April next, to answer to Thomas W. Letson, a citizen of the State of New York, in a plea why the said corporation have not kept their covenant with the said Thomas W. Letson and Elisha Turner, a citizen of New York, (the said Thomas W. having survived the said Elisha,) to the damage of the said Thomas W. Letson, sixty-two thousand and eighty dollars. And have you this writ before the justices of the said court, at the time and place aforesaid.

Witness the honorable R. B. Taney, chief justice of the United States of America, at Columbia, in South Carolina district aforesaid, the 4th Monday in November, anno Domini eighteen hundred and forty-one, and the 66th year of the sovereignty and independence of the United States of America.

[Seal of court.]

H. Y. GRAY, Clk. cir. ct.

PETIGRU & LESESNE.

Marshal's return.—*Marshal's return to distringas.*

THE UNITED STATES OF AMERICA,
South Carolina district:

I do hereby certify to the honorable the judges of the circuit court of the United States for South Carolina district, that, in obedience to the mandate within written, I repaired to the office of the Louisville, Cincinnati and Charleston Railroad Company, for the purpose of executing the within precept, when I was told by their solicitor that the said company would appear as within directed, which they have accordingly done. I therefore did not execute the writ.

(Signed) THO. D CONDY,
March, 1842. *U. S. Marshal, S. C. D.*

Proved before me, this 16th March, 1842.

H. Y. GRAY, *Clk. Cir. C.*

And thereupon the said Louisville, Cincinnati and Charleston Railroad Company, on the said sixteenth day of March, A. D. one thousand eight hundred and forty-two, by Messrs. Peronneau, Mazyck and Fin-

ley, their attorneys, did file in the office of the clerk of the said circuit court their appearance, in the words and figures following, to wit:

Appearance of defendant's attorney.

Appearance for the Louisville, Cincinnati and Charleston Railroad Company, at the suit of T. W. Letson, to a writ of distringas, returnable on the fourth day of April next.

PERONNEAU, MAZYCK & FINLEY,
March 16, 1842. *Attorneys.*

And afterwards, to wit, on the 6th day of April, A. D. eighteen hundred and forty-two, the said defendants, by Messrs. Peronneau, Mazyck and Finley, their attorneys, filed in the office of the clerk of the said circuit court, a plea to the jurisdiction of the said court, which plea is in the words following, to wit:

Plea to the jurisdiction.—*Plea to the jurisdiction.*

And the said the Louisville, Cincinnati and Charleston Railroad Company come and say, that this court ought not to have or take further cognizance of the action aforesaid, because they say that the said the Louisville, Cincinnati and Charleston Railroad Company is not a corporation whose members are citizens of South Carolina, but that some of the members of the said corporation are citizens of South Carolina, and some of them are, and were at the time of commencing the said action, citizens of North Carolina. And the State of South Carolina is, and was at the time of commencing the said action, a member of the said corporation, and the bank of Charleston, South Carolina, is also, and was at the time of commencing the said action, a member of the said corporation, which said the Bank of Charleston, South Carolina, is a corporation, some of whose members are, and were at the time of commencing the said action, citizens of the State of New York. And the Charleston Insurance and Trust Company is now, and was at the time of commencing the said action, a member of the said Louisville, Cincinnati and Charleston Railroad Company, which said the Charleston Insurance and Trust Company is a corporation, some of whose members are now, and were at the time of commencing the said action, citizens of the State of New York. And this the said the Louisville, Cincinnati and Charleston Railroad Company are ready to verify. Wherefore they pray judgment whether the court can or will take further cognizance of the action aforesaid.

PERONNEAU, MAZYCK & FINLEY,
Defendant's Attorneys.

James Gadsden, President of the Louisville, Cincinnati and Charleston Railroad Company, maketh oath and saith, that the foregoing plea is true in substance and fact. JAMES GADSDEN,
President L. C. & C. R. R. C.

Sworn to before me, this sixth day of April, 1842.
E. H. EDWARDS, *N. P. & Q. U.*

And afterwards, to wit, on the thirteenth day of April, A. D. eighteen hundred and forty-two, the said plaintiff, by Messrs. Petigru and Lesesne, his attorneys, filed in the office of the clerk of the said court his demurrer to the plea aforesaid, which said demurrer is in the words following, to wit:

Demurrer.—*Demurrer.*

And the said Thomas Warren Letson, by Petigru and Lesesne, his attorneys, says that he, by any thing in the plea of the said Louisville, Cincinnati and Charleston Railroad Company, by their plea in abatement alleged, ought not to be barred from this action aforesaid, because he says that the said plea and the matters therein contained are not sufficient in law to preclude this court from the cognizance of the said cause: wherefore, for want of a sufficient plea in this behalf, the plaintiff prays that the defendant may be ordered to answer to the declaration in this behalf, and the matters therein contained.

And for cause of demurrer to the said plea, the plaintiff sets down and alleges the following: First, that the said plea does not show, by name, the supposed members of the Louisville, Cincinnati and Charleston Railroad Company, who are citizens of North Carolina. Secondly, that the said plea does not show by name the supposed members of the Bank of Charleston who are citizens of New York. Thirdly, that the said plea does not allege and show by name the members of the Charleston Insurance and Trust Company, who are citizens of New York. And fourthly, that even if the matters so imperfectly alleged in the said plea had been set forth with due certainty, the same are insufficient in law to oust this court of its jurisdiction.

PETIGRU & LESESNE.

And the said defendants, on the same thirteenth day of April, A. D. 1842, by Peronneau, Mazyck and Finley, their attorneys, put in their joinder of demurrer, which is in the words following, to wit:

Joinder of demurrer.—*Joinder.*

And the defendants allege that the matters by them in their plea to the jurisdiction of this court, are sufficient in law to sustain their plea, and pray the judgment of the court that the said court should not take further cognizance of the action aforesaid.

PERONNEAU, MAZYCK & FINLEY,
Defendant's Attorneys.

And afterwards, to wit, on the twentieth day of April, A. D. one thousand eight hundred and forty-two, in the record of proceedings of the said circuit court, is the following entry:

THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY,
vs.
THOMAS W. LETSON, survivor, of New York.

Motion to amend plea.

Mr. Mazyck, in behalf of the defendants, moved for leave to amend their plea to the jurisdiction in this case.

Mr. Mazyck was heard in support of his motion.

Mr. Petigru, in behalf of the plaintiff, opposed the motion.

And Mr. Bailey, in reply, was heard in support thereof.

And on the twenty-first day of April, A. D. 1842, in the record of proceedings of said circuit court, is the following entry:

THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY,
ads.
THOMAS W. LETSON, survivor.

Order to amend plea.

On motion, ordered that the defendants have leave to amend their plea to the jurisdiction, by inserting the names of the members of the said company who are citizens of North Carolina, namely, John Rutherford and Charles Baring; and the names of the members of the Bank of Charleston, South Carolina, who are citizens of New York, namely, Thomas Parish and Edmund Lafau; and the names of the members of the Charleston Insurance and Trust Company, who are citizens of New York, namely, Samuel D. Dickson, James R. Dickson, Henry Parish and Daniel Parish.

And thereupon the said defendants, by Messrs. Peronneau, Mazyck and Finley, their attorneys, immediately did file in the office of the clerk of the said court their amended plea to the jurisdiction in this cause, in the words and figures following, to wit:

Amended plea to the jurisdiction.—*Amended plea.*

And the said the Louisville, Cincinnati and Charleston Railroad Company come and say, that this court ought not to have or take further cognizance of the action aforesaid, because they say that the said the Louisville, Cincinnati and Charleston Railroad Company is not a corporation whose members are citizens of South Carolina, but that some of the members of the said corporation are citizens of South Carolina, and some of them, namely, John Rutherford and Charles Baring, are, and were at the time of commencing the said action, citizens of North Carolina; and the State of South Carolina is, and was at the time of commencing the said action, a member of the said corporation, and the Bank of Charleston, South Carolina, is also, and was at the time of commencing the said action, a member of the said corporation, which said the Bank of Charleston, South Carolina, is a corporation, some of whose members, namely, Thomas Parish and Edmund Lafau, are, and were at the time of commencing the said action, citizens of New York. And the Charleston Insurance and Trust Company is now, and was at the time of commencing the said action, a member of the said Louisville, Cincinnati and Charleston Railroad Company; which said the Charleston Insurance and Trust Company, is a corporation, some of whose members, namely, Samuel D. Dickson, Henry R. Dickson, Henry Parish, and Daniel Parish, are now, and were at the time of commencing the said action, citizens of the State of New York.

And this the said the Louisville, Cincinnati and Charleston Railroad Company are ready to verify. Wherefore they pray judgment whether this court can or will take further cognizance of the action aforesaid.

PERONNEAU, MAZYCK & FINLEY,
Defendant's Attorneys.

James Gadsden, President of the Louisville, Cincinnati and Charleston Railroad Company, maketh oath and saith, the foregoing plea is true in substance and fact.

JAMES GADSDEN,
Pres't L. C. & C. R. R. Comp'y.

Sworn before me, this 21st April, 1842.

H. Y. GRAY, *Clk. Cir. C.*

And on the same twenty-first of April, A. D. 1842, in the record of proceedings of said circuit court, is the following entry:

Order sustaining demurrer.

THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY,
vs.
THOMAS W. LETSON, survivor.

The defendants having moved for leave to amend their plea to the jurisdiction, and having leave, amended the same. And the plaintiffs having withdrawn the causes assigned as cause of special demurrer, and the cause coming on to be heard upon the issue in law upon the plea and general demurrer, it is considered by the court that the demurrer be sustained, and that the defendant answer over.

And on the same day, the twenty-first of April, A. D. 1842, the said plaintiff, by Petigru and Lesesne, his attorneys, did cause judgment to be signed upon the demurrer to the plea above set forth, which said judgment is in the words following, to wit:

Judgment upon demurrer.—*Judgment upon demurrer.*

But because the said court is not yet advised what judgment to give of and upon the premises, day is given to the parties till the twenty-first day of April next. At which day comes as well the said T. W. Letson by his attorneys aforesaid, as the said the Louisville, Cincinnati and Charleston Railroad Company by their attorneys aforesaid, and the said premises being seen and fully understood by the said court, and mature deliberation being thereupon had: for that it appears to the said court here, that the plea aforesaid, by the said defendant in manner and form aforesaid above pleaded, and the matter in the same contained, are not sufficient to preclude the court here from taking further cognizance of the action aforesaid. Therefore it is considered that the said the Louisville, Cincinnati and Charleston Railroad Company further answer the said T. W. Letson to his writ and declaration aforesaid, and a further day is given by the said court here to the said company till

the day of , to answer the said declaration of the said T. W. Letson.

And on the said twenty-first day of April, A. D. 1842, the said defendants, by Messrs. Peronneau, Mazyck and Finley, their attorneys, did file in the office of the clerk of the said circuit court, *did file* their plea to the action aforesaid, in the words following, to wit:

Plea.—*Plea.*

And the said the Louisville, Cincinnati and Charleston Railroad Company, by Peronneau, Mazyck & Finley, their attorneys, come and defend the wrong and injury, when and so forth, and say that the said Thomas W. Letson ought not to have or maintain his action aforesaid against them, because they say that the said several articles of agreement in the said several counts of the said declaration contained are not, nor is either of them, the deed or deeds of these defendants; and of this they put themselves upon the country.

And for further plea in this behalf, by leave of the court here first had and obtained, according to the form of the statute in such case made and provided, the said the Louisville, Cincinnati and Charleston Railroad Company say that the said Thomas W. Letson ought not to have or maintain his said action against them, because they say that the said defendants did well and truly pay to the said plaintiff the said sum of one hundred and thirteen thousand one hundred and ninety-one dollars fourteen cents, in the said first count of the said declaration mentioned, and that three-fourths of the soil along the said section of the said road-way, so formed and prepared by the said Thomas W. Letson and company, amounting to two hundred and three thousand nine hundred and forty-eight cubic yards was not hard pan, and that the engineer of the said company did not determine the same to be hard pan, and did not determine its worth to be twelve and a half cents per cubic yard, and that the same was not worth so much, nor any thing, in addition to the thirty-seven cents per cubic yard in the said declaration mentioned, as in the said first count of the said declaration is alleged against them; and so the said defendants say that they have always, from the time of making the said agreement, well and truly performed, fulfilled and kept all things therein contained on their part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the said agreement, and of the said covenants of the said defendants by them in that behalf made as aforesaid, to wit, at Charleston aforesaid; and of this the said defendants put themselves upon the country, and so forth. And for a further plea in this behalf, by leave of the court here first had and obtained, according to the form of the statute in such case made and provided, the said Louisville, Cincinnati and Charleston Railroad Company say, as to the said second count of the said declaration, that they did well and truly pay to the said plaintiff the said sum of one hundred and thirteen thousand one hundred and ninety-one dollars fourteen cents, in the said second count mentioned; and they further say that three-fourths of the soil along the said section of the said roadway, so

formed and prepared by the said Thomas W. Letson and company, amounting to two hundred and three thousand nine hundred and forty-ty-eight cubic yards, was not hard pan, and was not worth twelve and a half cents per cubic yard, equal to twenty-five thousand four hundred and ninety-three dollars fifty cents, nor any thing in addition to the thirty-seven cents per cubic yard in the said second count mentioned, as in the said second count is alleged against them; and so the said defendants say that they have always, from the time of making the said agreement, well and truly performed, fulfilled and kept all things therein contained on their part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the said agreement, and of the said covenants of the said defendants, by them in that behalf made as aforesaid, to wit, at Charleston aforesaid; and of this they put themselves upon the country, and so forth.

And for a further plea in this behalf, by leave of the court here first had and obtained, according to the form of the statute in such case made and provided, the said defendants say, as to the said third count of the said declaration, that at the time of the completion of the said work in the said count mentioned, there was not a balance due to the said Thomas W. Letson and company of thirty-one thousand seven hundred and forty dollars ninety-nine cents, nor any balance so due; and so the said defendants say that they have always, from the time of making the said agreement, well and truly performed, and kept, and fulfilled all things therein contained on their part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning of the said agreement, and of the said covenants of the said defendants by them in that behalf made as aforesaid, to wit, at Charleston, aforesaid; and of this they put themselves upon the country, and so forth.

(Signed) PERONNEAU, MAZYCK & FINLEY,
Defendant's Attorneys.

And on the same 21st April, A. D. 1842, the said plaintiff by his attorneys joined issue in the words following, to wit:

Joinder of issue.—*Joinder of issue.*

And the plaintiff does the like.

PETIGRU & LESESNE,
Plaintiff's Attorneys.

Trial.—*Trial.*

And afterwards, to wit, at the April term of the said circuit court, in the year of our Lord one thousand eight hundred and forty-two, before the honorable James M. Wayne and the honorable Robert B. Gilchrist, judges of the said circuit court, came the parties aforesaid, by their respective attorneys aforesaid, and thereupon came also a jury, to wit:

John Greaton, foreman, A. Fogartie, S. Conner, Allen (pr. of Haviland,) John Cowan, N. Fehrenberg, George Just, C. H. Harbers, Benj.

Archer, Wm. Kirkwood, J. J. Joseph, and A. Benoist, twelve good and lawful men, who were duly chosen and sworn to try the issue so as aforesaid joined between the said parties.

And on the twenty-fifth day of April, A. D. one thousand eight hundred and forty-two, in the record of proceedings of the said court, is the following entry:

THOMAS W. LETSON
vs.
THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY. } Covenant.

Mr. Petigru opened this case in behalf of the plaintiff.

The following witnesses were sworn and examined on the part of the plaintiff, to wit:

A. Mathiesen, W. F. Graham, C. D. Young, W. S. Cochran, and Major McNeill.

The testimony in writing of Major R. W. Colcock, J. L. Cole, J. W. Taylor, Jacob Zimmerman, and Henry Beazeley was then read.

The following witnesses were then sworn and examined on the part of the defendants, viz: E. S. Cheesborough and John P. Norton.

A letter from the plaintiff to General Edwards was then read in evidence.

And on the following day, the 26th April, A. D. 1842, in the record of proceedings of the said court, is the following entry:

THOMAS W. LETSON
vs.
THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY.

The court having ruled that evidence to support the charge in the bill of particulars for transportation and passage, is inadmissible under the issue joined between the plaintiff and defendants; ordered, that the plaintiff have leave to strike out the said charge from the bill of particulars.

Mr. Mazyck was heard in behalf of the defendants.

Mr. Bailey also heard for defendants; and

Mr. Petigru for the plaintiff.

The court then charged the jury, and they brought in the following verdict, which was ordered to be recorded:

Verdict.—*Verdict.*

We find for the plaintiff eighteen thousand one hundred and forty-two $\frac{43}{100}$ dollars.

JOHN GREATON, *Foreman.*

And afterwards, to wit, on the thirtieth day of April, A. D. one thousand eight hundred and forty-two, being a day of the aforesaid term of the said circuit court, judgment was signed in the foregoing cause; which said judgment is in the words and figures following, to wit:

Postea and judgment.—*Postea and judgment.*

Therefore it is commanded that the marshal of South Carolina district do summon forty-eight good and lawful men, to be drawn by ballot, according to the directions of the act of Congress in such case made and provided, to be and appear before the chief justice of the United States and his associates in the circuit court, to be holden at Charleston, on the 11th day of April next, by whom, and so forth, and who neither, and so forth, to recognise, and so forth, because as well, and so forth: and the same day given to the parties aforesaid, at the place aforesaid. And afterwards, that is to say, on the day and at the place aforesaid, before the justice aforesaid, come as well the said plaintiff by his attorneys aforesaid, as the said defendants by their attorneys aforesaid, and the jurors aforesaid being demanded, some of them, to wit, John Greaton, (foreman,) George Just, A. Fogartie, S. Conner, C. H. Harbers, Allen (pr. of Haviland,) Benj. Archer, Wm. Kirkwood, John Cowan, N. Fehrenberg, J. J. Joseph, and A. Benoist,—come, and being drawn by ballot, according to the directions of the said act of Congress aforesaid, and sworn of the jury aforesaid to say the truth of the within contained, do, on their oath, say that the said defendants have failed to keep the said covenants in manner and form as the said plaintiff above in his declaration has alleged against them; and they assess the damages of the said plaintiff by reason of the breach of the covenants aforesaid, over and above his costs and charges by him about his suit in this behalf expended, to eighteen thousand one hundred and forty-two dollars twenty-three cents.

Therefore it is considered that the said T. W. Letson, survivor aforesaid, do recover against the said the Louisville, Cincinnati and Charleston Railroad Company, the damages so found by the jurors aforesaid; and also five hundred and twenty-seven $\frac{65}{100}$ dollars, for his costs and charges aforesaid to the said T. W. Letson, by the said court now here with his assent adjudged, which said damages, costs and charges amount in the whole to eighteen thousand six hundred and sixty-nine $\frac{88}{100}$ dollars; and be the said defendants in mercy, and so forth.

Judgment signed 30th April, 1842.

H. Y. GRAY, *Clk. Cir. Ct.*

	Costs.
Attorney	$126 11
Witnesses	328 85
Clerk -	44 59
Marshal	28 10
	$527 65

And afterwards, to wit, on the seventh day of May, in the year last aforesaid, the said the Louisville, Cincinnati and Charleston Railroad Company filed in the office of the clerk of said court their bond with security to prosecute their writ of error; which said bond was approved by the honorable Robert B. Gilchrist, judge of the United States

for the district of South Carolina, and is in tenor and form following, to wit:

Bond.—*Bond.*

THE UNITED STATES OF AMERICA,
South Carolina district:

Know all men by these presents that we, the Louisville, Cincinnati and Charleston Railroad Company, Ker Boyce, Cornelius Buckmyer, Jas. Gadsden, George A. Trenholm and W. C. Dukes, are held and firmly bound unto Thomas Warren Letson, in the full and just sum of twenty thousand eight hundred and thirty-six dollars eighty-six cents, lawful money of the United States of America, to be paid unto the said Thomas Warren Letson, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made and done, we bind ourselves, and each and every of our successors, heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the seventh day of May, in the year of our Lord one thousand eight hundred and forty-two, and in the sixty-sixth year of the independence and sovereignty of the said United States.

Judg't	$18,142 23
Costs	527 65
	18,669 88
10 pr. ct.	1,866 98
	300 00
	$20,836 86

Whereas a judgment has been obtained in the sixth circuit court of the said United States for South Carolina district, by the said Thomas Warren Letson against the said the Louisville, Cincinnati and Charleston Railroad Company, for the sum of eighteen thousand six hundred and sixty-nine dollars 88 cents, which said judgment was duly entered up on the thirtieth day of April, in the aforesaid year of our Lord one thousand eight hundred and forty-two. And whereas the said the Louisville, Cincinnati and Charleston Railroad Company have since prayed a writ of error from the Supreme Court of the United States at Washington:

Now the condition of the above obligation is such, that if the aforesaid the Louisville, Cincinnati and Charleston Railroad Company, the plaintiffs in error, shall prosecute their writ of error to effect, and answer and pay all such damages and costs as shall be adjudged if they fail to make their plea good, and in all respects conform to and abide by such order or orders as may be made in the premises, then and in such case the foregoing obligation shall be void, or else to be and remain in full force and virtue.

Taken and acknowledged before me,

R. B. GILCHRIST,
Judge of the United States for the district of So. Carolina.

Attest: JAMES GADSDEN, *Pres't Louisville, Cincinnati and Charleston Railroad Co.* { SEAL R. R. CO. }

KER BOYCE, [L. S.]
C. BUCKMYER, [L. S.]
JAMES GADSDEN, [L. S.]
G. A. TRENHOLM, [L. S.]
W. C. DUKES. [L. S.]

Approved :
R. B. GILCHRIST,
Judge of the U. S. for the district of South Carolina.

UNITED STATES OF AMERICA,
District of South Carolina, sct :

I, Henry Y. Gray, clerk of the circuit court of the United States for the sixth circuit, South Carolina district, do hereby certify that the foregoing is a full, true and complete transcript of the record and proceedings of the said circuit court in the foregoing cause, herewith transmitted to the Supreme Court of the United States, in pursuance of the writ of error hereunto annexed.

In testimony whereof I have hereto subscribed my name and affixed the seal of the said circuit court, at office, in the city of [L. S.] Charleston, district aforesaid, the twenty-eighth day of December, A. D. one thousand eight hundred and forty-two.

H. Y. GRAY, *Clerk.*

SUPREME COURT OF THE UNITED STATES.
January Term, 1842.

THE LOUISVILLE, CINCINNATI AND CHARLESTON RAILROAD COMPANY, plaintiffs in error,
vs.
THOMAS WARREN LETSON.

Afterwards, to wit, on the day of , before the judges of the Supreme Court of the United States, at Washington, come the said Louisville, Cincinnati and Charleston Railroad Company, by , their attorney, and say, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit: that the said the Louisville, Cincinnati and Charleston Railroad Company is not a corporation whose members are citizens of South Carolina, but two of them, namely, John Rutherford and Charles Baring, were, at the time of commencing the said action, and also at the time of giving the judgment aforesaid, and yet are, citizens of North Carolina; and the State of South Caroli-

na was, at the time of commencing the said action and also at the time of giving the judgment aforesaid, and yet is, a member of the said corporation; and the Bank of Charleston, South Carolina, was, at the time of commencing the said action and also at the time of giving the judgment aforesaid, and yet is, a member of the said corporation; which said bank is a corporation two of whose members, namely, Thomas Parish and Edmund Lafau, were, at the time of commencing the said action and also at the time of giving the judgment aforesaid, and yet are, citizens of New York; and the Charleston Insurance and Trust Company was, at the time of commencing the said action and also at the time of giving the judgment aforesaid, and yet is, a member of the said the Louisville, Cincinnati and Charleston Railroad Company, which said Charleston Insurance and Trust Company is a corporation some of whose members, namely, Samuel D. Dickson, James R. Dickson, Henry Parish and Daniel Parish, were, at the time of commencing the said action, and also at the time of giving the judgment aforesaid, and yet are, citizens of New York; and therefore in that there is manifest error. And this they the said the Louisville, Cincinnati and Charleston Railroad Company are ready to verify; wherefore they pray that the judgment aforesaid may be revoked, annulled and altogether held for nothing; and that they may be restored to all things which they have lost by occasion of the judgment aforesaid, and so forth.

Filed 7th January, 1843.